

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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VEHICLE RADIO SYSTEM WITH
CUSTOMIZED ADVERTISING

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Group Art Unit: 3688

Examiner: James W. Myhre

REPLY BRIEF

Board of Patent Appeals and Interference
US Patent and Trademark Office
PO Box 1450
Alexandria, Virginia 22313-1450

Sirs:

This Reply Brief is being filed in response to the Examiner's Answer mailed August 30, 2010.

Response to Examiner's Arguments

Please consider the following comments which are being submitted in reply to certain of the Examiner's arguments contained in the Examiner's Answer.

The grounds for rejection set forth in Section (9) of the Examiner's Answer appear to be identical to that contained in the final rejection from which this appeal is being made. In Section (10) beginning at page 19, the Examiner makes various arguments in response to the Appeal Brief for which some comment is warranted. The following comments are identified by sub-headings that correspond to those used in Section (10) of the Examiner's Answer.

(a) The Examiner asserts that it was not improper to re-reject claims 26-42 on the basis of the same two references previously considered by the Board in the first appeal because (i) the Board had no obligation to address obviousness of claims that had been rejected only under Section 102 and (ii) that the lack of a new grounds for rejection by the Board does not automatically foreclose a Section 103 rejection that is based on a further review of the same two references. While both statements may be true, the fact is that as to (i) the Board did consider obviousness based on the combination of the two references, at least when it considered the Section 103 rejection of claim 42, for which the Board stated in its Decision on Appeal at Page 13, lines 20-26, that nothing had been identified from Hite "which would have provided one of ordinary skill in the art reason to modify Dimitriadi's system to meet these limitations" from independent claim 26. So, while the Board had no obligation to consider the obviousness of claim 26, it clearly did do so. And as to (ii) that a further obviousness rejection on the same two references was not automatically foreclosed by the Board's decision, such a repeated rejection should not be made or permitted unless and until the Examiner corrects the deficiency noted by the Board in the original obviousness rejection of claim 42, something which was not done by the Examiner in making the Section 103 rejection of claims 26-42. As noted in the Appeal Brief, the Examiner's rejection of claim 26 that begins on Page 5 of the final rejection (and that is repeated in the Examiner's Answer) does not even appear to address this deficiency at all.

The Examiner asserts that it is not without precedence to re-reject claims following a Board Decision based on the same references that "were previously used, but in a different manner." First, this is merely a bald factual assertion not supported by any evidence. No such precedence or authority has been identified or made of record. But, apart from that, the references have not been shown to have been applied in the new rejection "in a different manner" than considered by the Board. As noted above, the final rejection does not even address the missing claim 26 limitation noted by the Board. So, this is not a case of the Examiner having corrected a deficiency in the overturned earlier rejection.

(b) In this section of the Examiner's Answer, a more substantive treatment of the above-noted deficiency is provided and, respectfully, apart from being wrong, it should have been provided, if at all, during normal prosecution when it could be adequately addressed and

perhaps resolved, rather than being supplied for the first time in an Examiner's Answer during appeal.

The primary deficiency in the rejection of the claims argued by Appellant in the Appeal Brief is that the invention of claim 26 includes both a vehicle radio and a radio broadcast receiver and recites, *inter alia*, that the "advertising control unit is operable to access one of the stored radio advertisements, with the accessed radio advertisement being inserted into the advertising slot identified by the received marker so that the accessed radio advertising is included within the audio content sent to the input of the vehicle radio." Thus, in the invention of claim 26, the audio content sent to the vehicle radio includes the received radio broadcast together with the inserted advertisement, whereas in Dimitriadis' system as shown in Fig. 2, the advertising is sent to the speaker amplifier 68 independently of the received voice broadcast. Although the Examiner asserts in Section (10)(a) of the Examiner's Answer that Hite makes up for this deficiency in Dimitriadis, the discussion in sub-section (b) focuses almost exclusively on how Dimitriadis should be interpreted as teaching this limitation. The only mention there of Hite in connection with this limitation is the unsupported assertion that Hite discloses "transmitting the combined data stream to the vehicle radio." Not only has no supporting citation to Hite been provided in support of this statement, but also Hite does not even involve a "vehicle radio."

The Examiner's primary argument for obviousness of claim 26 and its dependents in connection with the above-quoted limitation is that Dimitriadis discloses the limitation in its operation of microprocessor 60 which the Examiner states should be considered the claimed advertising control unit rather than Dimitriadis' advertisement presentation block 104. Appellant respectfully submits that this interpretation is wrong because (1) it is contrary to the Board findings and decision in the Decision on Appeal, (2) it is not supported by the disclosure of Dimitriadis, and (3) even if accepted as the interpretation, it still does not result in the recited limitations. Each of these is discussed below.

As to (1), in the Board's Decision on Appeal, it states in Findings of Fact (FF) number 1, that "[t]he voice radio receiver delivers a voice signal derived from the voice broadcast to the microprocessor and separately to an amplifier which drives speakers to play the voice broadcast. (Dimitriadis, col. 4, 11. 1-3,47-48 and 55-58)." In FF6, the Board found that "[w]hen an

advertisement is played, the advertisement presentation block delivers stored audio advertising content to the amplifier which drives the speakers. (Dimitriadis, col. 5, ll. 19-24)." And, finally, in overturning the Section 103 rejection on the basis of Dimitriadis and Hite, the Board stated:

"Claim 42 ultimately depends from claim 26. Parent claim 26 recites a radio system for a vehicle including a "vehicle radio having an input for receiving audio data ..." and a radio broadcast receiver "coupled to the input of the vehicle radio to provide the vehicle radio with the received audio content" On receipt of a marker identifying an advertising slot, an advertising control unit of the radio system "is operable to access one of the stored radio advertisements, with the accessed radio advertisement being inserted into the advertising slot identified by the received marker *so that the accessed radio advertisement is included within the audio content sent to the input of the vehicle radio.*" [Emphasis added.] We conclude that Dimitriadis does not teach or suggest these limitations []."

The Examiner's interpretation of Dimitriadis runs directly counter to these findings and ultimate conclusion of the Board, and does so without identifying any clear error made by the Board. Appellant therefore respectfully submits that the Examiner is not entitled to ignore these factual findings and determinations of the Board.

As to (2), apart from being contrary to the Board Decision on Appeal, the assertion that microprocessor 60 is properly considered the advertising control unit of claim 26 is also contrary to the teachings of Dimitriadis itself. The Examiner asserts on Page 20 that microprocessor 60 "retrieves the advertisements from the database and places one or more of them into a queue within the Advertising Presentation module (Figure 2, item 104), and finally causes the advertisements to be inserted into the appropriate advertising slots within the regular audio broadcast stream and sent to the vehicle radio (Figure 2, item 68) to be played on the vehicle radio speakers (Figure 2, item 70)." Again, this is the newly-presented basis upon which the Examiner asserts that Dimitriadis discloses the above-quoted missing limitations from claim 26. However, there are a number of inaccuracies in this statement from the Examiner. First, microprocessor 60 does not retrieve and place advertisements into a queue. While microprocessor 60 can retrieve advertisements, it does not do so as a part of presenting them via amplifier 68 and speakers 70. Instead the microprocessor 60 queues presentations of advertisements by providing an index value for the stored advertisement to the advertisement presentation block. See Col. 5, lines 7-15, of Dimitriadis which states:

"An advertisement presentation block 104 receives from microprocessor 60 an index value and has direct access to the memory resource 90 for presentation of advertisements stored therein. Thus, microprocessor 60 queues advertisement presentation by providing a sequence of index values to the advertisement presentation block 104. The advertisement presentation block, in turn, accesses memory resource 90 by reference to a queued index value and collects the requested advertisement record 400 for presentation."

This is entirely consistent with Fig. 2 of Dimitriadis which shows that the only source for presentation of audio is either from the voice radio 64 or from the advertisement presentation block 104. In this regard, while the microprocessor 60 might "cause" the advertisements to be presented, as stated by the Examiner, it is not the microprocessor that accesses the advertisement itself that is presented, as recited in claim 26, but the advertisement presentation block 104 which Dimitriadis says and shows has "direct access to the memory" where the advertisements are stored.

And, as to (3), regardless of how one were to denominate or group the individual components of Dimitriadis' Fig. 2 system, it does not meet the above-quoted limitations from claim 26 for the reasons discussed in the Appeal Brief, prior responses, and the Board's Decision on Appeal. For example, even if one were to consider the microprocessor 60, memory 90, and advertisement presentation block 104 together as comprising the claimed advertising control unit from claim 26, that combined structure still is not "operable to access one of the stored radio advertisements, with the accessed radio advertisement being inserted into the advertising slot identified by the received marker *so that the accessed radio advertisement is included within the audio content sent to the input of the vehicle radio*," as recited in claim 26. (Emphasis added.) As clearly shown in Fig. 2 of Dimitriadis, the advertisements are provided to the amplifier 68 and not somehow inserted into audio content that is sent from a radio broadcast receiver to the vehicle radio input, as claimed. This is true notwithstanding the Examiner's attempted re-characterizations of the various Fig. 2 components disclosed by Dimitriadis. In this regard, Appellant notes that the Examiner, at Page 20 of the Examiner's Answer, states "the vehicle radio (Figure 2, item 68)" and at Page 21 states "the user's vehicle radio (e.g. amplifier and speakers)," thereby indicating that he is equating the claimed vehicle radio with the amplifier 68 of Dimitriadis. This is contrary to the reference's teaching itself. An amplifier is not a vehicle radio. Dimitriadis states at Col. 2, lines 64-67 that "[i]n the preferred form of the present

invention, a receiving device which includes a combination of a car radio [64] and a paging device [62] collects and stores advertising information for later presentation." (Emphasis and reference numerals added.) See also, Col. 4, lines 55-67, where Dimitriadis states "[a] voice radio receiver 64, also coupled to antenna 42, receives the voice broadcast 22 and delivers a voice signal 66 to microprocessor 60 and to an amplifier 68 driving speakers 70," and then also refers to the voice radio receiver 64 simply as a voice radio. Clearly, the voice radio 64, not the amplifier 68, corresponds to the vehicle radio of claim 26 and, as such, the system of Dimitriadis does not meet the above-not limitations of claim 26.

(c) The comments in sub-heading (b) above apply also to the Examiner's mischaracterization of Dimitriadis as it applies to claim 31. Contrary to that asserted by the Examiner, the microprocessor 60 does not retrieve an advertisement and insert it into the audio stream as it is being sent to the vehicle radio. Claim 31 recites that "the radio broadcast receiver is connected to the input of the vehicle radio and wherein the advertising control unit is operable to supply the accessed radio advertisement to the radio broadcast receiver for insertion into the audio content by the radio broadcast receiver." The Examiner's comments again focus on the operation of the microprocessor to cause presentation of an advertisement, but do not demonstrate that Dimitriadis discloses or otherwise renders obvious the construction recited by Appellant wherein the advertisement is inserted by a radio broadcast receiver into audio content that is sent from the receiver to a vehicle radio.

(d) The Examiner does not specifically address the distinguishing limitations noted in the Appeal Brief for claim 32, nor has he identified any disclosure from Hite by which such a modification of Dimitriadis would have been obvious. Dimitriadis sends the advertisement directly to the amplifier 68 for presentation via the speakers 70 and nowhere teaches or suggests supplying an advertisement from an advertising control unit to a radio broadcast receiver that then inserts the advertisement into the audio content sent to the input of a vehicle radio.

(e) Again, the Examiner's conclusion as to claim 33 depends on the erroneous interpretation of Dimitriadis that is contrary to its teachings and the Board's prior findings and conclusions. Dimitriadis does not disclose sending the broadcast stream through an advertising control module where an advertisement is inserted into the audio content that is then sent to a

vehicle radio. As to the Examiner's comment concerning Appellant's arguments about the insertion of advertising taking place either inside the radio broadcast receiver (claim 31) or outside the receiver (claim 33), Appellant notes that the distinctions being argued concerning these claims are not simply the location of the insertion, but the structural interconnection of various recited components from different embodiments that are not shown or suggested by Dimitriadis or Hite. Specific, distinguishing language from each of the claims has been identified by Appellant and not rebutted by the Examiner.

Conclusion

In view of the foregoing, Appellant respectfully submits that no *prima facie* case of obviousness has been made, and that the rejection of claims 26-42 over the combination of Dimitriadis and Hite is improper. Board action is therefore respectfully requested to overturn the rejection of these claims.

The Commissioner is hereby authorized to charge any deficiencies, or credit any overpayment associated with this appeal brief to Deposit Account No. 07-0960.

Respectfully submitted,

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